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8 Attorneys for Defendant
9 SMITH'S FOOD & DRUG CENTERS, INC.

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 SABINE BARCLAY and ROBERT
13 BARCLAY, husband and wife,

14 Case No. 2:18-cv-01046-RFB-CWH

15 Plaintiffs,

16 vs.

17 THE KROGER COMPANY, a foreign
18 corporation, d/b/a SMITH'S FOOD & DRUG
19 CENTERS, INC; DOES I through XX; and
20 ROE CORPORATIONS, I-XX, inclusive.

21 **STIPULATION AND ORDER TO
22 DISMISS THE KROGER COMPANY
23 ONLY, WITHOUT PREJUDICE**

24 Defendants.

25 WHEREAS, prior to removing this case to federal court, the parties had submitted a stipulation
26 to dismiss defendant THE KROGER CO., improperly identified as THE KROGER COMPANY, from
27 this litigation and to amend the caption to reflect said change; and

28 WHEREAS, the stipulation was submitted to the State Court Judge prior to Defendant filing its
Notice of Removal yet the stipulation was not signed by the State Court Judge until after Defendant had
filed its Notice of Removal and counsel for the parties hereby submit this stipulation to this Court to
ensure that the Court is aware of the dismissal of said defendant;

29 IT IS HEREBY STIPULATED AND AGREED by and between CHARLES A. MICHALEK,
30 ESQ. of the law firm ROGERS, MASTRANGELO, CARVALHO & MITCHELL, LTD. as counsel for
31 Plaintiffs SABINE BARCLAY and ROBERT BARCLAY and JERRY S. BUSBY, ESQ. of the law firm
32 COOPER LEVENSON, P.A. as counsel for Defendants SMITH'S FOOD & DRUG CENTERS, INC.
33 improperly identified in the Complaint as "THE KROGER COMPANY d/b/a SMITH'S FOOD &

1 DRUG CENTERS, INC." as follows:

2 1. That Defendant THE KROGER COMPANY **only** be dismissed, without prejudice, with
3 each party to bear its own attorney fees and costs, if any, related to the naming of THE
4 KROGER COMPANY as a Defendant in this litigation;

5 2. That this dismissal applies **only** to Defendant THE KROGER COMPANY and the litigation
6 shall continue between Plaintiffs SABINE BARCLAY and ROBERT BARCLAY and
7 Defendant SMITH'S FOOD & DRUG CENTERS, INC.; and

8 3. That in the event Plaintiff finds good cause to later include Defendant THE KROGER
9 COMPANY in this litigation, Plaintiff shall have until the deadline for amending the
10 pleadings established by the Court to file either a stipulation or a motion to amend to include
11 THE KROGER COMPANY again as a Defendant in this litigation.

12 IT IS FURTHER STIPULATED AND AGREED that the caption of this case be amended as set
13 forth below to indicate that SMITH'S FOOD & DRUG CENTERS, INC. is the Defendant in this case.

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1 SABINE BARCLAY and ROBERT
2 BARCLAY, husband and wife,

3 Plaintiffs,

4 vs.

5 SMITH'S FOOD & DRUG CENTERS, INC;
6 DOES, a foreign corporation, d/b/a SMITH'S;
I through XX; and ROE CORPORATIONS, I-
XX, inclusive.

7 Defendants.

8 DATED: July 31, 2018

9 ROGERS, MASTRANGELO,
10 CARVALHO & MITCHELL, LTD.

11 /s/ Charles A. Michalek, Esq.
12 CHARLES A. MICHALEK, ESQ.
13 Nevada Bar No. 005721
14 700 South Third Street
15 Las Vegas, Nevada 89101
(702) 383-3400
16 Attorneys for Plaintiffs
17 SABINE and ROBERT BARCLAY

Case No. 2:18-cv-01046-RFB-CWH

DATED: July 31, 2018

COOPER LEVENS, P.A.

18 /s/ Jerry S. Busby
19 JERRY S. BUSBY, ESQ.
20 Nevada Bar No.001107
21 1835 Village Center Circle
22 Las Vegas, Nevada 89134
(702) 366-1125
23 Attorneys for Defendant
24 SMITH'S FOOD & DRUG CENTERS, INC.

17 **ORDER**

18 IT IS SO ORDERED that:

19 1. Defendant THE KROGER COMPANY only be dismissed, without prejudice, with each
20 party to bear its own attorney fees and costs, if any, related to the naming of THE
21 KROGER COMPANY as a Defendant in this litigation;

22 2. This dismissal applies **only** to Defendant THE KROGER COMPANY and the
23 litigation shall continue between Plaintiffs SABINE BARCLAY and ROBERT
24 BARCLAY and Defendant SMITH'S FOOD & DRUG CENTERS, INC.;

25 3. In the event Plaintiff finds good cause to later include Defendant THE KROGER
26 COMPANY in this litigation, Plaintiff shall have until the deadline for amending the
27 pleadings established by the Court to either file either a stipulation or a motion to amend
28 to include THE KROGER COMPANY again as a Defendant in this litigation; and

4. The caption of this case be amended as set forth above to indicate that SMITH'S FOOD & DRUG CENTERS, INC. is the Defendant in this case.

DATED this the 1st day of August, 2018.

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UNITED STATES DISTRICT COURT JUDGE